

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/4/2024

1ST AMENDMENT PRAETORIAN,

Plaintiff,

-against-

THE NEW YORK TIMES COMPANY,
and ALAN FEUER,

Defendants.

23-cv-12 (MKV)

ORDER

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff initiated this action by filing a Complaint on January 3, 2023. [ECF No. 1]. On July 6, 2023, with leave from the Court, Plaintiff attempted to file an Amended Complaint on the docket. [See ECF No. 12.] The next day, a notice was filed on the ECF docket by Docket Services in the Southern District of New York, informing Plaintiff's counsel that there was a "filing error" with respect to the Amended Complaint and that, as a result, the filing was deficient. The notice expressly informed Plaintiff's counsel "Anthony C. Carlini to RE-FILE [the] Document" and advised that "the wrong party/parties whom the pleading is against were selected." The notice then provided explicit steps on how to correctly re-file the Amended Complaint. To date, Plaintiff's counsel has not properly re-filed the Amended Complaint on the docket.

Nevertheless, Defendants subsequently filed a motion to dismiss the deficiently filed Amended Complaint, along with a Memorandum of Law in Support and accompanying exhibits. [ECF Nos. 13–15.] Thereafter, Plaintiff filed a Memorandum of Law in Opposition [ECF No. 21], and Defendants filed a Reply [ECF No. 22]. Defendants' motion to dismiss, however, is a motion to dismiss a pleading that has not been properly docketed and filed with the Court. As a result, the Court cannot entertain on the merits Defendants' motion. Accordingly, Defendants' motion to dismiss is hereby DENIED without prejudice.

IT IS FURTHER ORDERED that on or before **January 19, 2024**, Plaintiff shall properly file its Amended Complaint.

IT IS FURTHER ORDERED that if Plaintiff properly files its Amended Complaint by that date, Defendants must file any motion to dismiss on or before **February 9, 2024**. Further briefing shall then be submitted on the schedule set forth in Local Rule 6.1(b).

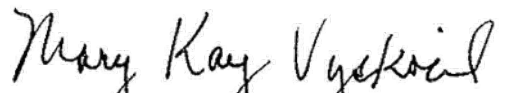
IT IS FURTHER ORDERED that if Plaintiff chooses not to file an Amended Complaint by January 19, 2024, Defendants shall file a letter with the Court, on or before **January 23, 2024**, advising whether they intend to move to dismiss the original Complaint [ECF No. 1], which remains the operative pleading in this case unless and until Plaintiff properly files its Amended Complaint. Any such motion must be filed on or before **February 9, 2024**.

Any request for an extension or adjournment shall be made by letter filed on ECF and must be received at least 72 hours before the deadline. Failure to comply with the Court's orders may result in sanctions, including monetary penalties, preclusion at trial of information not provided, or preclusion and/or dismissal of claims or defenses.

The Clerk of Court is respectfully requested to terminate docket entry number 13.

SO ORDERED.

Date: January 4, 2023
New York, NY


MARY KAY VYSKOCIL
United States District Judge